IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

WP(C).No. 1165 of 2007(L)

OS.276/2000 of II ADDL.M.C., ERNAKULAM

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PETITIONER:

RAGHAVAN,
KOLLIMUTTATHUPARAMBIL, THEKKUMBAGHAM KARA,
THEKKUMBAGHAM VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

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1. RAJAMMA, W/O. RAJAPPAN,
HOUSE NO.20/375, KAITHAVALAPPIL,
KALLAI DESOM, PANNIYANKARA VILLAGE,
KOZHIKODU TALUK.

2. SUDHARSANAN, S/O. LATE KRISHNAN,
-DO- -DO-

3. RAMANI, D/O. KRISHNAN,
-DO- -DO-

4. SAROJINI, D/O. LATE KRISHNAN,
-DO- -DO-

5. RATHI, D/O. LATE KRISHNAN,
-DO- -DO-

BY ADV. SRI.K.H.NADARSHA
SRI.K.H.NADARSHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER DATED 24.11.06 IN I.A.5729/06 IN O.S.276/2000, MUNSIFF COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF ORDER DATED 22/2/06 IN C.R.P.996/04, HIGH COURT OF KERALA.

EXT.P3: TRUE COPY OF I.A.5729/06 IN O.S.276/2000 MUNSIFF COURT, ERNAKULAM.

EXT.P4: TRUE COPY OF COUNTER AFFIDAVIT FILED BY 1ST RESPONDENT IN I.A.5729/06 IN O.S.276/2000 MUNSIFF COURT, ERNAKULAM.

EXT.P5: TRUE COPY OF I.A.2197/06 IN C.R.P.996/04 HIGH COURT OF KERALA.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1165 OF 2007

DATED THIS THE 15th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is first defendant in O.S.276/2000 on the file of Munsiff Court, Ernakulam. First respondent is plaintiff and other respondents the other defendants in the suit. Petitioner disputed the valuation and sufficiency of Court fee paid by first respondent. Along with other defendants, petitioner filed C.R.P.996/04 before this Court challenging the order of the trial Court on the sufficiency of valuation and Court fee. This Court disposed the revision under Ext.P2 order granting an opportunity to defendants to show that valuation of plaint is not correct. It is further directed that it shall be done within one month from the date of order on 22.2.06. Petitioner along with other defendants filed I.A.5729/06. It was dismissed under Ext.P1 order holding that petition was not filed within one month as directed by this Court. This petition is filed under Article 227 of Constitution of India challenging Ext.P1 order.

2. Learned Counsel appearing for petitioner was heard.

3. Arguments of Learned Counsel appearing for petitioner was that after Ext.P2 order, the case was posted for steps for first time on

21.6.06 and on 4.7.06 itself , the petition was filed and therefore there was no delay and Learned Munsiff should have allowed the application.

4. Learned Counsel appearing for respondent pointed out that after Ext.P2 order, petitioner along with other defendants filed Ext.P5 application before this Court for a declaration that defendants are entitled to get more time, but it was not granted by this Court and therefore there is no reason to interfere with Ext.P1 order.

5. The case of petitioner is that along with I.A.5729/06 defendants have produced four documents which show that the value of property as claimed by first respondent plaintiff is not correct and the land value is much higher than what was shown in the plaint and in such circumstances, a Commission should have been appointed.

6. Under Ext.P1 order, learned Munsiff did not consider whether the valuation is correct and whether the Court fee paid is proper. Though under Ext.P2 order, this Court directed defendants to take steps within one month, they did not take steps within one month. But when defendants produced documents to strengthen their case that valuation is not correct, learned Munsiff has to consider the contentions in the light of those documents and pass appropriate order in accordance with law.

Learned Munsiff is directed to hear defendants and plaintiff on the question of sufficiency of court fee paid and the correctness of valuation taking into consideration the documents produced by defendants before the Court below. After considering the documents and hearing the arguments, if the trial Court finds that appointment of Commission is necessary to fix the value, Ext.P1 order will not prevent the court from appointing a Commission.

M.SASIDHARAN NAMBIAR,JUDGE

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